

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONNIE JACKSON and U.S. POSTAL SERVICE,
EUTAW STATION, Fayetteville, NC

*Docket No. 00-1706; Submitted on the Record;
Issued April 23, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained a recurrence of disability on April 8, 1998 causally related to his April 21, 1997 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the Office's hearing representative, dated and finalized July 28, 1999, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

The Board further finds that the Office properly denied appellant's claim for a recurrence of disability on April 8, 1998 in its October 29, 1999 decision.

By letter dated August 20, 1999, appellant requested reconsideration of the Office's July 28, 1998 decision and submitted additional evidence.

By decision dated October 29, 1999, the Office denied modification of its July 28, 1999 decision.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.¹ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that

¹ Charles H. Tomaszewski, 39 ECAB 461, 467 (1988).

conclusion with sound medical rationale.² Where no such rationale is present, medical evidence is of diminished probative value.³

In support of his request for reconsideration, appellant submitted a report dated August 13, 1999 in which Dr. Sampath V. Charya, a neurophysiologist, stated, “Given the automobile accident [1997 employment injury] where he reportedly was struck from behind with reaggravation of cervical and lumbar strain and chronic low back pain and in view of his degenerative spine disease..., he is anatomically and physiologically prone to reaggravation of his back pain from trauma and lifting of heavy weights greater than 30 to 40 [pounds]. However, Dr. Charya did not specifically address appellant’s claimed recurrence of disability on April 8, 1998 and therefore this report is not sufficient to discharge appellant’s burden of proof to establish that his recurrence of disability on April 8, 1998 was causally related to his 1997 employment injury.

The Board further finds that the Office properly denied appellant’s January 28, 2000 request for reconsideration.

By letter dated January 28, 2000, appellant requested reconsideration and submitted additional evidence.

By decision dated February 23, 2000, the Office denied appellant’s request for reconsideration on the grounds that the evidence submitted in support of the reconsideration request was found to be of a cumulative or immaterial nature and insufficient to warrant further merit review.

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁴ When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁵

In support of his request for reconsideration, appellant submitted a December 3, 1999 report from Dr. Charya in which he stated that the 1997 employment injury “probably” had a reaggravating role in relation to his history of back problems. He stated:

“In view of degenerative lumbar spine disease and history of lumbar spine surgery ... in 1982 and chronic degenerative disc disease at multiple lumbar levels including L2-3 and L5-S1 and cervical spondylosis and neuroforaminal

² *Mary S. Brock*, 40 ECAB 461, 471 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁴ 20 C.F.R. § 10.606(b)(2) (1999).

⁵ 20 C.F.R. § 10.608(b) (1999).

narrowing at the cervical spine level [at] C3-4, C4-5 [and] C5-6 ... may have direct and secondary mechanical and distorting effects in view of predisposing and vulnerable preexisting condition of degenerative spine disease.... By the effect on intervertebral disc ligament articular facets at the levels stated above, he may have pain reagravating effect, not only on the musculoskeletal component of the spine and the secondary effects on the neuroforamina and the nerves, resulting in pain and paresthesias, as detailed in [previous progress notes]. This appears to be a chronic condition ... with the need for pain medications on a chronic basis....”

However, Dr. Charya did not specifically address appellant’s claimed recurrence of disability on April 8, 1998. Therefore, the report does not constitute relevant and pertinent evidence not previously considered by the Office. As appellant did not show that the Office erroneously applied or interpreted a specific point of law, did not advance a relevant legal argument not previously considered by the Office, and did not submit relevant and pertinent evidence not previously considered by the Office, the Office was within its discretion in denying his request for reconsideration.

The decisions of the Office of Workers’ Compensation Programs dated February 23, 2000 and October 29 and July 28, 1999 are affirmed.

Dated, Washington, DC
April 23, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member